

WATER COUNCIL MEETING

Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

January 10, 2007
9:00 a.m.

Members present: Councilors Bradley, Butler, Cowan, Czysz, DiMarzio, Lyons, Lynch, Phillips, Rastaulis, Patenaude, and Varotsis

Members absent: Councilors Barrett, Bridges, Densberger, Dupee, Lussier

F. Wayne DiMarzio, Vice Chairman, called the meeting to order at 9:00 a.m.

1. Approval of Minutes of December 13, 2006 Meeting

A motion was made by Councilor Bradley to accept the minutes of the December 13, 2006 meeting as presented. The motion was seconded by Councilor Butler. The Council unanimously voted to approve the minutes.

2. Approval of State Aid Grants

State Aid Grants

Steve Snell of the Wastewater Engineering Bureau requested approval of five new state aid grants as set forth in a memo from Bureau Administrator John R. Bush, P.E. to Harry T. Stewart, P.E., Director, Water Division dated December 22, 2006.

Councilor Varotsis moved to approve the grant amendments and recommend favorable action by the Governor and Executive Council by adoption of the following resolution in its entirety. Councilor Bradley seconded the motion and it was unanimously voted.

WHEREAS, The following municipalities have applied to the Department of Environmental Services, under the provisions of RSA 486,III, for an amended grant in the amounts listed, to aid in the defraying of the original costs resulting from the construction of facilities which will result in increased septage handling and/or treatment capacity, as defined in said Chapter:

<u>MUNICIPALITY</u>	<u>PROJ. NO.</u>	<u>PROJECT DESCRIPTION</u>	<u>AMOUNT</u>
Merrimack County	C-736	Wastewater Treatment Facility Upgrade and Expansion	\$ 226,971
Plymouth VW&SD	C-737	Fairgrounds Road Sewer Extension	\$ 443,700
Dover	C-738	Ultraviolet Disinfection System Upgrade	\$ 199,812
Somersworth	C-739	Wastewater Infrastructure Improvements	\$ 3,282,004
Greenville	C-740	Infiltration / Inflow Study	\$ 9,000

WHEREAS, The Department of Environmental Services has examined said applications as to the eligibility of the construction costs for State Contributions; and

WHEREAS, The Water Council finds that said projects are intended to meet, control, or reduce pollution in the surface waters of the State, as defined in RSA 485-A,

NOW THEREFORE, The Water Council finds that all of the provisions of RSA 486 have been met by said applicants, and respectfully recommends that the Governor and Executive Council approve said grants and authorize payment thereof through the Department of Environmental Services as provided for in said Chapter.

3. Drinking Water Filtration Grant

Richard Skarinka of the Wastewater Engineering Bureau requested approval of a new state aid grant as set forth in a memo from Bureau Administrator Sarah Pillsbury, to Harry Stewart, P.E., Director, Water Division dated November 21, 2006.

Councilor Cowan moved to approve the grant and recommend favorable action by the Governor and Executive Council by adoption of the following resolution in its entirety. Councilor Varotsis seconded the motion and it was unanimously voted.

WHEREAS, the following public water system has applied to the Department of Environmental Services, under the provision of RSA 486-A, for a grant in the amount listed to aid in defraying the costs resulting from compliance with the Surface Water Treatment Rule, as defined in said Chapter:

PUBLIC WATER SYSTEM	GRANT #	PROJECT	AMOUNT
Plainfield Village Water District	07-1921010	New ground water wells and tank	\$135,652.72

WHEREAS, the Department of Environmental Services has examined said application as to the eligibility of the design and construction costs for state contributions; and

WHEREAS, the Water Council finds that said project is intended to protect public health as defined in RSA 485-A;

NOW THEREFORE, the Water Council finds that all provisions of RSA 486-A have been met by said applicant and respectfully recommends that the Governor and Executive Council approve said grant and authorize payments thereof through the Department of Environmental Services, as provided for in said Chapter.

4. Status of Appeals

Michael Sclafani distributed an Appeals Status Report and reviewed pending appeals with the council.

- **Docket No. 03-14 WC - Gerald A. Bell – Water Division Denial of Application for Waiver of Septage Rules**
Pending results of Declaratory Judgment in Merrimack Superior Court.

Stay remains in effect pending the resolution of the declaratory judgment action. No action is required by the Council.

- **Docket No. 04-05 WC - Appeal of Freudenberg-NOK General Partnership**

Trial on Petition for Declaratory Judgment in Grafton Superior Court has been continued. Stay remains in effect. No action is required by the Council.

- **Docket Nos. 04-18 WC and 04-19 WC – Appeal of Thaddeus Dymon and Town of Newport**

A stay remains in effect pending the resolution and a final decision is expected soon from Sullivan County Superior Court. No action is required by the Council.

- **Docket No. 05-21 WC - Appeal of Save Our Groundwater**

The Council voted unanimously to decline to accept this appeal finding that the Appellant(s) failed to establish standing in their Notice of Appeal.

- **Docket No. 05-22 WC - Appeal of Town of Nottingham**

The Council voted unanimously to decline to accept this appeal finding that the Appellant(s) failed to establish standing in their Notice of Appeal.

- ❖ Discussion and vote appear at the end of agenda Item 8 after returning from recess.

- **Docket No. 06-04 WC - Appeal of Andrews and Carpenter**

On August 9, 2006 the Appeal hearing re-convened. Written Decision and Order has not yet been issued. No action is required by the Council.

- **Docket No. 06-08 WC – Conservation Law Foundation**

On September 18, 2006 a Pre-Hearing Conference was held and a Pre-Hearing Order subsequently issued.

On December 21, 2006 DES files a Witness and Exhibit List.

On December 22, 2006:

DOT files a Witness List, Exhibit List, and Motion to File Exhibits in Electronic Form. CLF files a Witness and Exhibit List and a Motion to Allow Counsel to Introduce & Discuss Documentary Exhibits Without Witnesses.

Both motions were verbally denied.

December 27, 2006 CLF files an Objection to DOT Motion.

December 28, 2006 DES files an Objection to CLF Motion.

Appeal Hearing to take place today at 10 a.m.

- **Docket No. 06-13 WC – Administrative Order – Shane Forest**

On October 10, 2006 Appeal Accepted and Stayed.

On December 14, 2006 – Council sends letter to Appellant requiring a monthly status report beginning January 2007. Appellant files a Monthly Status Report on December 20, 2006. No action is required by the Council.

- **Docket No. 06-15 WC – Administrative Order – Andrew P. and Christine J. Lane**

On December 13, 2006 Council Accepts Appeal with Wayne DiMarzio appointed Presiding Officer. Pre-hearing Conference scheduled for February 5, 2007 at 9 A.M., with Notice Distributed. No action is required by the Council.

**5. Rules: Proposed Revised – Env-Wq 500
State Water Pollution Control Revolving Loan Fund**

Gretchen Rich reviewed the following areas where changes are proposed:

- Reorganized rules to flow in a more logical manner
- 502 Clarified/updated definitions
- 504.03 Added Prioritization of Proposed Projects
- 504.04 Added Intended Use Plan (IUP)
- 505.04 Added Eligible Costs for Landfill closures
- 506.01 Added provision for DES access to project site/written records
- 506.03 Added Department action on application
- 506.06 Added section on award of construction contracts
- 506.08 Added provisions for a hearing regarding timely use of funds
- 506.09 Added disbursement request requirements
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- 506.13 Added a section on how retainage is applied
- 509.05 Added Public Notification and Review Period for Environmental Assessments

Councilor Varotsis made a motion to approve the rules as presented and to authorize the bureau to continue with the rulemaking process. Councilor Butler seconded the motion and the majority voted in favor with Councilor Cowan voting in opposition.

6. Legislative Update by Director Harry Stewart

Director Stewart reported the current LSRs are on the website with bills to be filed when language has been drafted. There are currently 25-30 water-related LSRs. Next month they should be in bill form.

7. Other Business

Gretchen Hamel has been working with the 3 councils to try to unify the rules as much as possible. Copies of the proposals were to be made for all Council members.

8. Next Meeting

The next meeting is scheduled for February 14, 2007.

Meeting went into recess at 9:39.

Meeting resumed at 10:23.

❖ **Discussion and Vote on the following Dockets:**

• **Docket No. 05-21 WC - Appeal of Save Our Groundwater**

Has been tabled by Council since December 14, 2005 in order to consult with counsel on the subject of standing.

Councilor Bradley moved to take No. 05-21 WC – Appeal of Save Our Groundwater off the table to consider whether to hear or dismiss the appeal or decline to accept. Councilor Phillips seconded the motion and it was unanimously voted.

Councilor Bradley moved to Decline to Accept the Appeal because the Appellant failed to establish standing in the Notice of Appeal. Councilor Patenaude seconded the motion and it was unanimously voted.

• **Docket No. 05-22 WC - Appeal of Town of Nottingham**

Has been tabled by Council since December 14, 2005 in order to consult with counsel on the subject of standing.

Councilor Varotsis moved to take No. 05-22 WC – Appeal of Town of Nottingham off the table to consider whether to hear or dismiss the appeal or decline to accept. Councilor Bradley seconded the motion and it was unanimously voted.

Councilor Phillips moved to Decline to Accept the Appeal because the Appellant failed to establish standing in the Notice of Appeal. Councilor Varotsis seconded the motion and it was unanimously voted.

9. **Adjournment**

A motion was made by Councilor Bradley to adjourn. The motion was seconded by Councilor Phillips and unanimously voted.

The meeting adjourned at approximately 10:36 a.m.

10:45 APPEAL HEARING - Docket No. 06-08 WC
"Conservation Law Foundation appeal of
Section 401 Water Quality Certificate No. 2002-007 (Widening of I-93)"
